

## **Chapter 4. Resource Conservation Programs**

### **Article 3. Rigid Plastic Packaging Container Program**

#### **Section 17942. Regulatory Effect of Questions and Answers; Effective Dates.**

(a) Both the question and answer in each section have regulatory effect for purposes of implementation and enforcement. In addition to the regulations in this article, statutory provisions contained in Sections 42300 through 42345 of the Public Resources Code govern the Rigid Plastic Packaging Container Program.

(b) The requirements of these regulations go into effect for all rigid plastic packaging containers except those identified in Section ~~17944.2~~ 19746 on January 1, 1995, and for all calendar years thereafter, if at least 60 percent of the single family homes in the state are served by curbside collection programs that include beverage container recycling by January 1, 1994.

#### **NOTE**

Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Section 42300 et seq., Public Resources Code.

#### **HISTORY**

1. New article 3 (sections 17942-17949) and section filed 11-4-94; operative 12-5-94 (Register 94, No. 44).

#### **17943. Purpose And Definitions**

(a) What is the purpose of these regulations?

These regulations provide guidance to those who must comply with the Rigid Plastic Packaging Container Program requirements, and include a description of the procedures that product manufacturers, container manufacturers, resin manufacturers, distributors, and importers must follow to meet reporting, certification, and documentation requirements. These regulations pertain only to rigid plastic packaging containers sold or offered for sale or distribution in California, regardless of where the containers or the products they hold are produced.

(b) Definitions.

The following definitions, as well as definitions found in Public Resources Code Section 42300-42345, apply to the regulations in this Article.

- (1) The “Board” means the California Integrated Waste Management Board.

~~(2) “Capable of Multiple Re-closure” means a rigid plastic packaging container that can be closed and re-closed with its attached or unattached relatively inflexible lid.~~

~~(3)~~ (2) “Cosmetic” means those articles pursuant to the federal Food, Drug and Cosmetic Act (21 U.S.C. 321 (i)), and pertinent regulations in effect as of January 1, 1994, which are 1) intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and 2) articles intended for use as a component of any such articles; except that such term shall not include soap as defined in 21 C.F.R. 701.20(a)(1) and (2). Products intended for cleansing the human body and which are not “soap” as defined in 21 C.F.R. 701.20(a)(1) are classified as “cosmetics.”

~~(4)~~ (3) “Container Manufacturer” means the manufacturer of any rigid plastic packaging container as defined in Section 17943(b)(~~30~~ 29) of this Article.

~~(5)~~ (4) “Curbside Collection Program” means a recycling program that collects materials set out by homeowners for collection at the curb at intervals not less than every two weeks. “Curbside collection program” does not include redemption centers, buyback locations, drop-off programs, material recovery facilities, or plastic recovery facilities.

~~(6)~~ (5) “Drugs” mean those articles as defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)) and pertinent regulations, ~~which are~~ as follows:

articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; and articles (other than food) intended to affect the structure or any function of the body of man or other animals; and articles intended for use as a component of any article specified in the clauses.

Drugs include prescription, nonprescription, and over-the-counter drugs regulated pursuant to the federal Food, Drug and Cosmetic Act (21 U.S.C. 321).

~~(7)~~ (6) “Final End User” means the person who purchases a rigid plastic packaging container in order to use the product held by the container. The final end user is that person who removes the product from the container and discards the container. “Person,” includes an individual, firm, organization, copartnership,

political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(8) (7) “Food” means those articles as defined in the federal Food, Drug and Cosmetic Act (21 U.S.C. 321(f)) and pertinent regulations, which are used for food or drink for man or other animals, chewing gum, and articles used for components of any such article.

(9) (8) “Infant Formula” as defined in the federal Food, Drug and Cosmetic Act (21 U.S.C. 321(f)) and pertinent regulations, means food which a manufacturer claims is to be used solely as food for infants, because it simulates human milk or is suitable as a substitute for human milk.

(10) (9) “Introduced” means any rigid plastic packaging container or product packaged in rigid plastic packaging containers that are first offered for sale and sold in California after January 1, 1995. Products for which such claims as “new” or “improved” are made and products for which the packaging has been changed by such criteria as size, color, or labeling, are not “introduced” packages or products.

(11) (10) “Label” as used in the definition of product manufacturer, means a display of written, printed or graphic material upon the immediate container of any product.

(12) (11) “Manufacturer” or “Product Manufacturer” means the producer or generator of a product which that is sold or offered for sale in the state and which that is stored inside of a rigid plastic packaging container. ~~For the purposes of section 17948(a) and 17949(c) and (d) of this Article, “manufacturer”~~ Manufacturer, as stated on the label, includes all divisions, subsidiaries, and any other entity, or trade/brand name, for which the manufacturer has responsibility. ~~regardless of whether or not the manufacturer’s name is on the label. Any licensee of a trade name that is the producer or generator of that product is considered the manufacturer.~~ affiliates.

~~(A) Identification of the Product Manufacturer, for the purposes of this program, shall be determined by the following hierarchy:~~

~~1. When the name of the entity that manufactured the product held by the container is stated on the container label, then that entity shall be considered the product manufacturer.~~

~~2. When the container label does not state the entity that manufactured the product held by the container, but the container label does state the~~

~~distributor of the container, then the distributor shall be considered the product manufacturer.~~

~~3. When the container label does not state either the entity that manufactured the product held by the container or the distributor of the container, but the container label states the importer of the container, then the importer shall be considered the product manufacturer.~~

(A) Sold or offered for sale includes but is not limited to direct sales, and sales through distributors, franchises and the Internet.

(B) Distributed means any rigid plastic packaging container that is shipped into California for the purposes of being sold or offered for sale in the state of California. Distributed does not include free promotional or give away items.

~~(B)~~ (C) “Stored” means that the container normally holds the product for more than seven days. For purposes of these regulations, point-of-sale products are not “stored” in a container for more than seven days.

~~(C)~~ (D) Any entity whose name may not appear on a label but which has a corporate relationship (i.e., parent/subsidiary or affiliate relationship) with an identified product manufacturer shall be allowed to assume the responsibilities of the product manufacturer as they relate to the requirements of Section 17944. The product manufacturer may be located inside or outside California, and/or inside or outside the United States.

~~(13)~~ (12) “May” means a provision is permissive.

~~(14)~~ (13) “Material Type” means broad feedstock categories such as paper, glass, plastic or aluminum. “Material type” does not mean individual plastic resins.

~~(15)~~ (14) “Measurement Period” means the time period for which compliance is being determined as part of the certification or auditing process described in Section ~~17946~~ 17945.2, ~~17946.5~~, and 17947 of this Article.

(A) Unless the reuse or refill compliance options, pursuant to Section 17944, are used, “measurement period” shall be the preceding calendar year. If the reuse or refill compliance option is being used, the product manufacturer may establish another measurement period that is appropriate to the product life cycle. If the product manufacturer establishes a measurement period other than the calendar year, the Board may request documentation to

substantiate the basis for the alternative measurement period.

(B) For products introduced for sale in California on any day other than January 1 of any year, the first measurement period for the first year in which the product's containers are required to comply with the program requirements shall be the remaining partial calendar year in which the product was introduced for sale in addition to the following calendar year. For all subsequent years, the measurement period shall be the calendar year, unless either the reuse or refill compliance option is used, in which case the manufacturer may establish a measurement period unique to its product, as described above.

~~(16)~~ (15) "Medical Device" means the same as it is defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) and pertinent regulations, and includes the following:

(A) any instrument, apparatus, implement, machine, contrivance or implant which is recognized in the National Formulary or United States Pharmacopoeia or any additional supplement thereof,

(B) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment or prevention of disease, in man or animal, or

(C) intended to affect the structure or any function of the body of man or animal. A medical device does not achieve any of its principle intended purposes through chemical action, nor is it dependent upon being metabolized to achieve its intended purpose.

~~(17)~~ (16) "Medical Food" means the same as it is defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) and pertinent regulations, which includes the following:

(A) foods formulated to be consumed or administered under the supervision of a physician, and

(B) foods intended for specific dietary management of disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.

For the purposes of these regulations, medical food is food that is consumed or directly placed in the stomach or intestines through a tube, or other food which is used to manage a disease or a medical condition, or food labeled

“may be used as the sole source of nutrition” or “may be used as the sole item of the diet”. For the purposes of these regulations, medical food is not food for which popular dietary claims are made such as “low-fat” or “low-sodium.”

~~(18)~~ (17) “Must” means a provision is mandatory.

~~(19)~~ (18) “Non-Source Reduced Container” means a container that is not considered source-reduced under the criteria established for this program as found in Sections 17943 ~~(31)~~ (b)(30) and ~~17946.5~~ 17945.3 (c)(a)(2) and (c)(3) ~~(b)(4)~~ of this Article.

~~(20)~~ (19) “Original Container” means a rigid plastic packaging container that is holding a product when initially sold to the final end user and which may later be reused or refilled, as used in Section ~~17946.5~~ 17945.3 (c)(4)(b)(2) and (c)(5)(b)(3) of this Article.

~~(21)~~ (20) “Particular Type Rigid Plastic Packaging Container” is a rigid plastic packaging container which holds a single type of generic product, such as milk or detergent.

~~(22)~~ (21) “Point-of-Sale Containers” are containers in which products are placed for sale directly to and intended for immediate consumption by the final end-user.

~~(23)~~ (22) “Postconsumer Material” means a material that would otherwise be destined for solid waste disposal, having completed its intended end-use and product life cycle. Postconsumer material does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.

Rigid plastic packaging containers holding obsolete or unsold products and post-industrial scrap that is commonly disposed, and not commonly reused within an original manufacturing process, shall be considered postconsumer material when used as feedstock for new products.

Internally generated scrap that has been commonly disposed may be considered postconsumer material if it is later used in a process other than the original manufacturing and fabrication process.

~~(24)~~ (23) “Product Associated Rigid Plastic Packaging Container” means a brand-specific rigid plastic packaging line which may have one or more sizes, shapes or designs and which is used in conjunction with a particular generic



product line. A product associated container holds a brand-specific product such as Brand “X” salad dressing or Brand “Y” automotive oil.

(25) ~~(24)~~ “Recycled” means a product or material which has been diverted from disposal in a landfill and has been reused in the production of another product.

(26) ~~(25)~~ “Recycling Rate” means one of the following:

(A) The proportion, as measured by weight, volume, or number, that a particular type of rigid plastic packaging container sold or offered for sale in the state, such as a milk jug, soft drink container, or detergent bottle, is being recycled in a given calendar year.

This recycling rate calculation includes all rigid plastic packaging containers sold or offered for sale in California that are used to package the generic product for which the particular type recycling rate is calculated.

(B) The proportion, as measured by weight, volume, or number, that a product-associated rigid plastic packaging container sold or offered for sale in the state, is being recycled in a given calendar year.

(27) ~~(26)~~ “Refillable package” means a rigid plastic packaging container ~~which~~ that the Board determines is routinely returned to and refilled by the product manufacturer at least five times with to replenish the original product that was held by the package. For the purposes of this compliance option program, the product manufacturer or the product manufacturer's agent ~~may~~ shall refill a the package.

(29) ~~(27)~~ “Reusable package” means a rigid plastic packaging container ~~which~~ that the Board determines is routinely reused by consumers at least five times to ~~store~~ replenish the original product contained by the package. For purposes of this compliance option the product manufacturer or its agent shall offer the replacement product.

(28) “Replacement product” means a product that is sold with the intent ~~that it be removed from its package in order~~ to replenish the contents of the original container that a consumer purchased. ~~that previously held the identical product~~ The replacement product shall be the same product, manufactured by the same company or its agent.

(30) ~~(29)~~ “Rigid Plastic Packaging Container” means any plastic package having a relatively inflexible finite shape or form, with a minimum capacity of eight fluid ounces or its equivalent volume and a maximum capacity of five fluid

gallons or its equivalent volume, that is capable of maintaining its shape while holding other products, including, but not limited to, bottles, cartons, and other receptacles, for sale or distribution in the state.

(A) Rigid plastic packaging containers are ~~capable of multiple re-closure, are sold holding a product, and are composed entirely of plastic with the exception of caps, lids, labels,~~ except that rigid plastic containers may have 1) caps, lids, labels, handles, and hinges made of non-plastic material; and 2) additives such as pigments, colorants, fillers, and stabilizers that are part of the plastic polymer compound. ~~and other additives such as pigments, colorants, fillers, and stabilizers that are an integral part of the plastic polymer compound.~~ Plastic caps and lids may be considered to be part of a rigid plastic packaging container at the product manufacturer's discretion.

(B) Blister packaging is packaging where one of the outside walls of the package is made from another material other than plastic such as paperboard.

~~(B)~~ (C) The size of the container shall be determined by its labeled fluid volume, or if not labeled, then by its equivalent fluid volumetric capacity. ~~The total volume of the closed container will establish if the container is within the eight ounce to five gallon size requirements. For those containers measured in liquid or fluid volume, such as fluid ounce, gallon, milliliter, or liter, the product manufacturer may use either the labeled volume or the volumetric volume.~~ The metric equivalent for the following U.S. liquid measures is as follows: eight (8) fluid ounces is equivalent to 236.59006 milliliters, and five (5) gallons is equivalent to 18.9272 liters. Containers for products which are labeled and sold by weight or an item count must be measured for their volumetric equivalency.

~~(C)~~ (D) “Flexible container” is a container that can be flexed, folded, and twisted, without the aid of tools, without damaging the container.

~~(D)~~ (E) “Rigid container” is a container which is not a flexible container and has essentially the same shape empty as full.

(F) If a durable product (e.g. toys, tools, appliances) is sold in a permanent storage case, then the case is considered part of the product and not a rigid plastic packaging container.

~~(E)~~ (G) If it is unclear whether a container is a rigid plastic packaging container, the Board will make that determination on a case by case basis.



The Board will make that determination by considering, at a minimum, how the container compares to others that are clearly regulated or excluded by the program.

(31) (30) “Source reduced container” means either of the following:

(A) A rigid plastic packaging container for which the manufacturer demonstrates ~~seeks~~ compliance as of January 1, 1995, whose package weight per unit or use of product has been reduced by 10 percent when compared with the packaging used for that product by the manufacturer from January 1, 1990, to December 31, 1994.

1. If the product held by the container was sold prior to January 1, 1990, the non-source reduced container weight is the average weight of the container during the first 60 days commencing with the first day of sale in multiple jurisdictions in 1990.
2. If the product held by the container was initially sold on or after January 1, 1990, the non-source reduced weight is the average weight of the container during the first 60 days it was introduced for sale in multiple jurisdictions.

(B) A rigid plastic packaging container for which the manufacturer demonstrates ~~seeks~~ compliance after January 1, 1995, whose package weight per unit or use of product has been reduced by 10 percent when compared with one of the following:

1. The packaging used for the product by the manufacturer on January 1, 1995.
2. The packaging used for that product by the manufacturer over the course of the first full year of commerce in this state.
3. The packaging used in commerce that same year for similar products whose containers have not been considered source reduced. “Similar products” are the same products held by “particular type rigid plastic packaging containers”, as defined in (210) of this section. The product manufacturer may demonstrate a comparison to “similar products” made by the same product manufacturer or made by another manufacturer.

(C) A rigid plastic packaging container is not a source reduced container for the purposes of this chapter if the packaging reduction was achieved by any of the following:

1. Substituting a different material type for a material which previously constituted the principle material of the container.
2. Increasing a container's weight per unit or use of product after January 1, 1991.
3. Packaging changes that adversely affect the potential for the rigid plastic packaging container to be recycled or to be made of postconsumer material. The Board may review any information provided by the manufacturer to determine if the packaging change adversely affects the potential for the rigid plastic packaging container to be recycled or to be made of postconsumer material.

(D) For the purposes of calculating source reduction, the stated weight of a non-source reduced container used for comparison purposes must be ~~be~~ the weight of the actual non-source reduced container used for twelve consecutive months. If the non-source reduced container has not been used for twelve consecutive months, the product manufacturer must provide information to the Board to support its claim if the Board requests supporting documentation as described in Section ~~17946.5~~ 17945.3. In addition, the stated weight of the source reduced container must be no greater than the weight of the actual container used for the duration that the source reduction compliance option is used.

1. If the source reduction of the container was achieved by manufacturing the container with a different resin than was used for the non-source reduced container, the new container is considered source reduced for the purpose of this program.
2. Any source reduction achieved by changing the rigid plastic packaging container to a flexible plastic container may be credited to other containers as part of the averaging method of compliance described in Section 17944 (b), Container Requirements.
3. If a rigid plastic packaging container for a specific product is entirely eliminated and the same product is sold in California without any packaging, the source reduction may be credited to other

containers as part of the averaging method of compliance described in Section 17944(b), Container Requirements.

#### NOTE

Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Sections 40170, 42300, 42301, 42310, 42330 and 42340, Public Resources Code.

#### HISTORY

1. New section filed 11-4-94; operative 12-5-94 (Register 94, No. 44).
2. Change without regulatory effect amending subsections (b)(12)(B) and (b)(22) filed 3-24-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).
3. Amendment of subsections (b)(26)(A)-(B) filed 9-17-2001 as an emergency; operative 9-17-2001 (Register 2001, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-15-2002 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (b)(26)(A)-(B) refiled 1-16-2002 as an emergency; operative 1-16-2002 (Register 2002, No. 3). A Certificate of Compliance must be transmitted to OAL by 5-16-2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-16-2002 order transmitted to OAL 2-28-2002 and filed 4-10-2002 (Register 2002, No. 15).

#### 17944. Container Requirements

(a) I am a product manufacturer responsible for ensuring that rigid plastic packaging containers comply with program requirements. What options do I have available to comply with ~~standards must~~ these requirements ~~containers meet~~?

On or after January 1, 1995, all rigid plastic packaging containers sold or offered for sale in the state must meet one of the following criteria:

- (1) Be made from at least 25 percent postconsumer material.
- (2) Be recycled at one of the following rates:
  - (A) All product-associated rigid plastic packaging containers must have a 45 percent recycling rate, or
  - (B) All particular-type rigid plastic packaging containers must have a 45 percent recycling rate.
- (3) Be reusable or refillable.
- (4) Be a source reduced container.
- (5) Be a container which contains floral preservative and is subsequently reused by the floral industry for at least two years. This compliance option is only

available for containers used by the floral industry in California. Similar containers sold to nurseries, landscapers, retail stores, and other outlets that are not wholesale or retail flower sellers or growers do not qualify for this compliance option.

For purposes of this section, rigid plastic packaging containers that are “sold or offered for sale” in the state refers to rigid plastic packaging containers that are manufactured on or after January 1, 1995, and subsequently sold or offered for sale in California.

(b) **“Corporate Averaging”** Must every rigid plastic packaging container, that is not the subject of waiver pursuant to Section 17944.2 **17946** (a) or exempt pursuant to Section ~~17944.5~~ **17946.5**(a) of this Article, meet one of the compliance options listed in subdivision (a) of this section?

No, every rigid plastic packaging container ~~must~~ **does** not **have to** individually meet one of the compliance ~~standards~~ **options**. A product manufacturer may achieve compliance for its containers based on an average. This average shall only be allowed for rigid plastic packaging containers for which the same compliance option is used. Averaging may be calculated using either data specific to containers sold and recycled in California or containers sold and recycled nationwide. Manufacturers may average the source reduction, postconsumer material, refill, or reuse options to express compliance for the containers they use. Averaging may be based on the manufacturer's entire product line or any sub-lines determined by the manufacturer. If averaging is used, every rigid plastic packaging container must be included in an average or comply through another compliance alternative.

#### NOTE

Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Sections 42301, 42310, 42326, 42330 and 42340, Public Resources Code.

#### HISTORY

1. New section filed 11-4-94; operative 12-5-94 (Register 94, No. 44).
2. New subsection (a)(5) filed 5-30-97; operative 5-30-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

#### **Section 17945. Compliance with Regulations ~~Who Must Comply With These Regulations?~~**

(a) Who is responsible for ensuring that the containers regulated by this program are in compliance with the requirements of this Article?

(1) Product manufacturers, pursuant to Section 17943(b)(1~~2~~) of this Article, are responsible for compliance with the requirements of the rigid plastic

packaging container program at all times regardless of whether or not the product manufacturers are notified to submit a certification package.

(2) Product manufacturers that are responsible only for products exempt under section 17944.5 17946.5 are required to comply only with section 17944.5 17946.5(b) and shall certify under penalty of perjury the exemption claim.

#### NOTE

Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Sections 42301 and 42325, Public Resources Code.

#### HISTORY

1. New section filed 11-4-94; operative 12-5-94 (Register 94, No. 44).

#### **Section ~~17946~~ 17945.2. Submitting Certifications ~~Who Must Certify That Compliance With This Article Is Met?~~**

(a) Who must submit certifications?

(1) Product manufacturers, pursuant to Section 17943(b)(12) (11) of this Article, and only upon notification from the Board as described in this section, are required to certify to the Board that the containers that they use comply with the rigid plastic packaging container requirements if they sell or offer for sale a product in a rigid plastic packaging container that is sold to a final end-user in California. Product manufacturers are responsible for reporting all sales into California, including but not limited to direct sales, distributor sales, and Internet sales.

Upon notification from the Board's request, a product manufacturer must submit a ~~Board-supplied~~ product manufacturer certification containing information that includes, but is not limited to, the information described in Section 17945.3 ~~(i) below.~~ The Board will include forms in its notification.

A product manufacturer ~~must~~ shall, in addition, submit a container manufacturer certification if the product manufacturer chooses compliance based on the postconsumer content or source reduction compliance options, pursuant to this section and Sections 17944 and ~~17946.5~~ 17945.3 of this Article.

(2) Container manufacturers must supply a certification to product manufacturers that includes the information described in sSection 17945.4. (h) below, if the container manufacturer produces rigid plastic packaging containers that either Alternatively, if the container manufacturer provides the product manufacturer with all the information described in Section 17945.3 (c)(1) through (3) Section and 17945.5 as part of standard business procedures, then that same information

may be submitted to the Board in lieu of a container manufacturer certification. As with the Board supplied container manufacturer certification, the information supplied by the container manufacturer to the product manufacturer must be submitted with any product manufacturer certification that is submitted to the Board.

~~(1) Meet the postconsumer material compliance option, or~~

~~(2) Meet the source reduction compliance option where the source reduction was achieved by reducing the weight of the containers used for a specific amount (ounces, grams, etc.) of product.~~

(3) Proprietary information included in a certification submitted to the Board as required by this Article shall not be made available to the general public. The Board's procedures for protection of proprietary information can be found in section 17948.

~~(b)(d)~~ How will the Board determine which product manufacturers be selected and notified that a certification is required ~~are to submit a rigid plastic packaging container certification form and how will the Board notify product manufacturers of its determination?~~

~~In addition to random selection, t~~The Board may use the following criteria to determine when to request a certification form from a product manufacturer: container type, product type held by the container, company size, impact on California waste stream, compliance history, or receipt of information that causes the Board to suspect that a container is not in compliance. The Board will request a certification of compliance from a product manufacturer in writing.

~~(c)(b)~~ When must certifications be submitted?

The Board ~~may request a completed certification from~~ will notify a product manufacturer once per calendar year or once per a product manufacturer's compliance measurement period that a certification is required, pursuant to Section 17943(b)(15)~~(14)~~ of this Article. The Board shall not initiate requests for certifications until January 1, 1996, and will not require a product manufacturer to submit evidence of its compliance until 90 days after the end of the calendar year or measurement period established pursuant to Section 17943(b)(15)~~(14)~~.

~~(c)~~ Where can I get a certification form?



~~As part of the Board's notification to product manufacturers that they shall submit a compliance certification, the Board will include a product manufacturer certification form and a container manufacturer certification form. The Board will request that compliance certification be made by certified mail.~~

~~(d)(e) How long do I have to submit the respond to a Board request for a completed certification to the Board forms?~~

A product manufacturer's completed certification forms must be postmarked no later than 90 calendar days from the date on which the Board's notice request arrived via certified mail. Product manufacturers may, in writing prior to the due date, request an extension of up to an additional 30 days to respond to the Board's request for certification. An extension may be granted by the Board if the product manufacturer provides the Board with documentary evidence to support its request based on criteria such as corporate acquisitions, corporate reorganizations, natural disasters difficulty obtaining container information, or catastrophic acts of God, or other criteria deemed acceptable upon the Board's evaluation.

~~(e)(f) As a product manufacturer, h~~How will I know if my certification is forms are complete? The Board will review the certification forms to determine its (1) the completeness of the certification forms; and (2) if not complete, any additional information or documentation needed. The Board will then notify the product manufacturer, via certified mail, if the certification is incomplete forms. The Board's notice will state whether what any additional information or documentation is required. The product manufacturer will have 30 days after the receipt of the notice to provide the required information or documentation.

(f) Can a product manufacturer switch the option it uses to attain compliance for its rigid plastic packaging containers? A product manufacturer may change the option it uses to attain compliance for its rigid plastic packaging containers one time per calendar year or other established measurement period.

(g) When must I submit supporting documentation to the Board? Following receipt of your compliance certification, the Board may require that you submit additional documentation to support your compliance claim. You must submit supporting documentation upon notification from the Board. If the Board wants you to submit supporting documentation, the Board will mail a request and you will have 60 days following the postmarked date to supply the information. Supporting documentation shall be submitted to the Board by certified mail. If the Board does not require additional supporting documentation, you should not include it with your compliance certification.

(h) How long must I keep the records required by these regulations? For all compliance standards used by a product manufacturer other than source reduction, all documentation supporting any compliance claim must be available for at least three (3) years following the end of the compliance period. For source reduction compliance claims, the supporting documentation for the baseline year must be available to the Board for at least three (3) years after the product is no longer sold in California.

~~(g) If I am a product manufacturer and I wish to claim compliance through the source reduction or postconsumer content options, as described in Section 17944 of this Article, who must provide certification to the Board: I or the container manufacturer?~~

~~When the basis for compliance is either the postconsumer material option or the source reduction compliance option where the reduction was achieved by a simple decrease in container weight, then the container manufacturer must provide certification to the product manufacturer. If either of these two compliance options are claimed, you must request the appropriate container manufacturer(s) to complete a Board-supplied container manufacturer certification form. This form will be provided to you with the original request for certification from the Board or at your request. This form must be completed by the container manufacturer, and must accompany your product manufacturer certification form when sent to the Board. The required information to substantiate either of these two compliance claims is described in section (h) below.~~

~~Alternatively, if the container manufacturer provides you with all the information described in section (h) below as part of standard business procedures, then that same information may be submitted to the Board in lieu of a completed container manufacturer form supplied by the Board. As with the Board-supplied container manufacturer certification, the information supplied by the container manufacturer to you must be submitted with any product manufacturer certification that is submitted to the Board.~~

~~The product manufacturer is responsible for compliance with the requirements in Section 17944, but the container manufacturer is responsible for ensuring the accuracy of any information it provides to you.~~

~~(h) If I am a container manufacturer, what type of information must I provide in my certification? You must provide, at a minimum, the following information:~~

~~(1) Your company's name, mailing address, and telephone number, and the name and title of the person responsible for supplying required information;~~

~~(2) The name, address, and telephone number of the product manufacturer at whose behest you are completing the certification form and the name and title of~~

~~the person at that company who requested that you complete a certification form. If you supply a standard form to all customers expressing compliance with either the postconsumer material or source reduction compliance options as described in (g) of this section and which includes the information required in this section, then you do not need to provide the information in the previous sentence;~~

~~(3) For compliance with the postconsumer material option, state the following: the percentage of postconsumer material in the containers in question, the total weight of resin used to manufacture the specified containers, and the total weight of postconsumer resin used to manufacture the specified containers.~~

~~(4) For compliance with the source reduction option that was achieved by a simple reduction in container weight, state the following: the percentage of weight reduction for the containers, and the average weight of the containers of the packaging line before and after source reduction occurred.~~

~~(5) Any other information the Board determines is necessary to verify compliance.~~

~~(6) The certification must be submitted under penalty of perjury, according to the following format:~~

~~“I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.”~~

~~(Date)\_\_\_\_\_ (Signature)\_\_\_\_\_~~

**(i) Section 17945.3 Product Manufacturer Certification Information**

If I am a product manufacturer, what type of information must I provide in my certification? The information may be submitted on a Board-supplied product manufacturer certification form. The information shall include, but not be limited to, the following:

**(a) Manufacturer Information**

(1) ~~Your~~ The company's name, mailing address, and telephone number, and the name and title of the person responsible for supplying the required information;

(2) ~~The advertised name of your product containers regulated by this article and the resin type used for the containers~~ A statement of manufacturer compliance including whether the manufacturer sold regulated containers in California, and whether some or all of the containers qualified for an exemption or waiver.

~~(3) The compliance option, as described in Sections 17943 and 17944 of this Article, used to attain compliance or a statement that the product container is not in compliance with program requirements. The information you are required to provide depends on the compliance option used~~ The certification must be submitted under penalty of perjury, according to the following format:.

**“I certify under penalty of perjury under the laws of the State of California that the foregoing and all supporting data supplied is true and correct.”**

**(Date)**\_\_\_\_\_ **(Signature)**\_\_\_\_\_

**Note:** The submittal must be signed by a corporate officer or manager authorized to make management decisions that govern the operation for the product manufacturer. If the manufacturer is a partnership or sole proprietorship, the certification must be signed by a general partner or proprietor.

#### **(b) Container Information**

(1) The advertised brand name or product line of the regulated containers.

(2) A description (i.e., jar, bottle, clamshell, etc.) of each container and the product type or brand name; the capacity or size of each container; and the resin type of each container.

The capacity or size must be expressed in the same unit that is used on the container label. For products that are sold based on weight or a numeric count, the size should be reported on an equivalent fluid volume basis.

(3) The number of containers for each brand name or product type sold during the reporting period. This data should include both direct sales by the manufacturer and sales through distributors, franchises, dealers, and agents. All mail order and Internet sales must be included.

(4) The weight, expressed in grams, of each regulated container sold during the compliance period.

(5) Any other information that the Board determines is necessary to verify compliance.

**Note:** For postconsumer and source reduction compliance options the product manufacturer must also obtain a certification from the container manufacturer

pursuant to Section 17945.4; the product manufacturer is responsible for ensuring that its report is consistent with any container manufacturer certification obtained. If the label states that the container is made with 25 percent postconsumer resin then the product manufacturer may include the label as proof of documentation. It is still necessary to include the number of containers and weight of the container.

(c) A product manufacturer must submit the following additional information specific to the compliance option selected:

**(1) Postconsumer Resin Option**

For container(s) for which compliance is claimed by the use of postconsumer material in the container(s):

- (A) the weight, in grams, of postconsumer material in the containers for which compliance is claimed;
- (B) the percentage of postconsumer material in the container(s);
- (C) a copy of the container manufacturer certification and information pursuant to section 17945.4;
- (D) an indication whether the container data is based on sales in California or nationally. Sales means sold, distributed, provided free as a sales promotions, etc; and
- (E) any other information the Board determines is necessary to verify compliance.

**(2) Source Reduction Option Based On Weight**

For containers where manufacturer compliance is claimed by a simple reduction in container(s) weight(s):

- (A) the weight of each container prior to source reduction and the weight of each container after source reduction;
- (B) the percentage the container(s) were source reduced;
- (C) a copy of the container manufacturer certification and information pursuant to section 17945.4;
- (D) an indication whether the container data is based on sales in California or nationally; and
- (E) any other information the Board determines is necessary to verify compliance.

**(3) Source Reduction Option Based On Concentrated Product**

For container(s) where manufacturer compliance is claimed by either concentrating the product or by a combination of concentrating the product and reducing the weight of the container that holds the product:

- (A) the weight per unit or use of product for each container prior to source reduction and the weight per unit or use of product for each container after source reduction;
- (B) the percentage by which the container(s) were source reduced;
- (C) a description of how the product was concentrated including the number of uses of the product in the non-source reduced and source reduced containers;
- (D) a copy of the container manufacturer certification and information pursuant to section 17945.4;
- (E) a indication whether the container data is based on sales in California or nationally; and
- (F) any other information that the Board determines is necessary to verify compliance.

#### **(4) Reuse Option**

For containers where manufacturer compliance is claimed by reuse of the container(s):

- (A) the average number of times the container was reused during the measurement period;
- (B) a statement of the measurement period that was used to determine the number of times the identified containers were reused, and a description of how and why that measurement period was selected;
- (C) the total volume or weight of the product sold in the original container(s) in the established measurement period;
- (D) the total volume or weight of the replacement product sold;
- (E) if the replacement product is sold in a rigid plastic packaging container include the weight of the container and its labeled fluid volume or its volumetric capacity. The conversion factor shall explain the number of uses per weight unit or volume unit of product for both the original product and for the replacement product;
- (F) copies of sales reports or other evidence that support the information in (C), and (D). Sales reports of the product sold in the original rigid plastic packaging container and sales reports of the replacement product must be identified separately; and
- (G) any other information the Board determines is necessary to verify compliance.



**Note:** This option will demonstrate compliance for the original containers only; the replacement product, if packaged in a rigid plastic packaging container, must comply under another option.

**(5) Refill Option**

For containers where manufacturer compliance was achieved by the manufacturer refilling the container(s):

(A) the average number of times the container was refilled within the measurement period;

(B) a statement of the period that was used to determine the number of times that the identified containers were refilled, and a description of how and why that measurement period was selected;

(C) the total number of original containers sold or used during the measurement period;

(D) the total volume or quantity of product sold by the product manufacturer during the established measurement period;

(E) copies of sales reports or other evidence that support the information in (C) and (D); and

(F) any other information the Board determines is necessary to verify compliance.

**(6) Particular Type or Product Associated Recycling Rate Option**

For containers for which manufacturer compliance was achieved by recycling of the particular type or product associated containers.

(A) Compliance Data:

1. the recycling rate, expressed as a percentage, for that specific particular type or product associated container(s) sold in California;

2. the number of particular type or product associated containers collected, recycled, diverted, etc., from disposal in California for recycling;

3. any other information that the product manufacturer believes is necessary to substantiate its compliance claim; and

4. any other information the Board determines is necessary to verify compliance.

(B) Approval of Recycling Rate Methodology

1. Present to the Board in writing for its approval the methodology used to determine the sales and recycling figures. This methodology must explain in detail how the figures will be derived or obtained. The Board must approve of the methodology prior to its use to determine a particular type or product associated recycling rate. For any given calendar year, if a product manufacturer elects to base compliance on this option, the methodology must have been submitted to the Board by July 1 of the compliance year. The Board shall notify the product manufacturer within 90 days of the postmark of the request as to whether the methodology is acceptable. If a methodology is determined to be unacceptable, the Board will provide the rationale for why the methodology is not acceptable and provide suggestions as to how the proposed methodology could be altered to be made acceptable.

2. Once a methodology has been approved, that same methodology must be used to determine the figures submitted as part of a compliance claim. If the approved methodology is not used and the manufacturer selects this compliance option, the Board may reject the product manufacturer's compliance claim. The methodology remains valid to determine compliance in future years, unless it is modified by the product manufacturer without the Board's approval. Procedures for obtaining authorization for modifying a methodology are identical to those for establishing the initial methodology as stated in this section. The Board may request original data.

3. Product manufacturers that use the particular type recycling rate to comply with this program may designate any person as the entity to design the methodology, perform the study, and submit supporting documentation to the Board on behalf of the product manufacturers who are using the particular type rigid plastic packaging containers.

#### **(7) Floral Industry Option**

For containers for which manufacturer compliance was achieved by the reuse of containers by the floral industry:

##### **(A) Compliance Data:**

1. the number of times containers are reused by the floral industry in California;

2. the number of containers sold to the floral industry in California

3. any other information that the product manufacturer believes is necessary to substantiate its compliance claim; and

4. any other information the Board determines is necessary to verify compliance.

(B) Approval of Methodology

Product manufacturers using the floral industry compliance option, as specified in Section 17944 (a)(5), shall submit to the Board for review and approval a methodology showing how affected containers will meet the two year reuse criteria. The manufacturer shall submit the proposed methodology to the Board on or before July 1 of the compliance period the manufacturer intends to use this compliance option.

The methodology shall include:

1. The proposed method used to determine the number of containers sold to the floral industry in California;

2. The proposed method used to determine the total number of containers sold in California; and

3. The proposed method used to determine the average reuse (in years) of the containers purchased by the floral industry in California. One acceptable method would be a statistically valid survey of the product manufacturer's floral industry customers, to be conducted by an independent contractor. If this method is used, a copy of the proposed survey form must be included in any submittals to the Board.

~~(A) For compliance with the postconsumer material option, state the percentage of postconsumer material in the containers for which you claim compliance.~~

~~(B) For compliance with any of the recycling rate options, state which recycling rate option was used, the recycling rate achieved, and a description of the products held by the containers that have achieved the stated rate.~~

~~(C) For compliance with the reuse option, state the average number of times the container was reused.~~

~~(D) For compliance with the reuse option, state the average number of times the container was refilled.~~

~~(E) For compliance with the source reduction option where the source reduction was achieved by either concentrating the product, or achieved by a combination of concentrating the product and reducing the weight of the container that holds the product, you must provide the following:~~

~~(1) The percentage the container was source reduced, and~~

~~(2) The average weight per unit of product or the average weight per use of product before the source reduction was made and the average weight per unit of product or the average weight per use of product after the source reduction was made.~~

~~(4) Any other information the Board determines is necessary to verify compliance.~~

~~(5) The certification must be submitted under penalty of perjury, according to the following format:~~

~~**“I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.”**~~

~~**(Date)**\_\_\_\_\_ **(Signature)**\_\_\_\_\_~~

#### **NOTE**

Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Sections 42320, 42321, 42323 and 42325, Public Resources Code.

#### **HISTORY**

1. New section filed 11-4-94; operative 12-5-94 (Register 94, No. 44).

2. Change without regulatory effect amending subsection (a)(2) filed 3-24-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).

3. Amendment of subsections (a) and (e), new subsection (f), subsection relettering and amendment of newly designated subsections (g) and (h)(2) filed 6-2-2003 as an emergency; operative 6-2-2003 (Register 2003, No. 23). A Certificate of Compliance must be transmitted to OAL by 9-30-2003 or emergency language will be repealed by operation of law on the following day.

4. Reinstatement of section as it existed prior to 6-2-2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 3).

5. Amendment of subsections (a) and (e), new subsection (f), subsection relettering and amendment of newly designated subsections (g) and (h)(2) filed 1-12-2004; operative 1-12-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 3).

**Section 17945.4. Container Manufacturer Certification Information**

**(a) If I am a container manufacturer, what type of information must I provide to the product manufacturer? You must provide, at a minimum, the following information:**

(1) The company's name, mailing address, and telephone number, and the name and title of the person responsible for supplying required information;

(2) The name, address, and telephone number of the product manufacturer at whose behest you are completing the certification form and the name and title of the person at that company who requested that you complete a certification form. If you supply a standard form to all customers expressing compliance with either the postconsumer material or source reduction compliance options as described in Section 17945.3 and which includes the information required in this section, then you do not need to provide the information in the previous sentence;

(3) For documentation of postconsumer material, state the following: the number of each size or type of container, the total weight in grams of each container, and the weight of postconsumer resin used to manufacture the specified containers.

(4) For documentation of source reduction that was achieved by a simple reduction in container weight, state the following: the number of each size or type of container, the weight in grams of each container of the packaging line before and after source reduction occurred.

(5) Any other information the Board determines is necessary.

(6) The documentation must be submitted under penalty of perjury, according to the following format:

**“I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.”**

(Date) (Signature)

**Section ~~17946.5~~ 17945.5. Documentation Requirements Compliance Calculation And Formulas.**

**How will the Board verify a manufacturer's claim of compliance?**

~~The Board may require product manufacturers and container manufacturers to submit to the Board supporting documentation that substantiates their compliance claims following the receipt of a certification. Except as otherwise stated, documentation to substantiate a compliance claim must be provided for the preceding calendar year.~~

~~Proprietary information included in a supporting documentation submitted to the Board as required by this Article shall not be made available to the general public. The Board's procedures for protection of proprietary information can be found in subsection 17948(i).~~

~~(a) I am a product manufacturer. What information must I provide to substantiate the certification claims made in response to Section 17946?~~

~~The information necessary to substantiate compliance varies depending upon the compliance option selected.~~

~~(1) For rigid plastic packaging containers for which the postconsumer material compliance option is claimed, the product manufacturer must provide, at a minimum, the following information:~~

~~(A) Certification from the container manufacturer stating the total weight of postconsumer resin in the containers for which compliance is claimed and the total weight of all resin used in the containers for which compliance is claimed. If later requested by the Board, the container manufacturer must provide copies of shipment orders, bills of lading, purchase orders, or other evidence of receipt of postconsumer resin during the previous calendar year for the manufacture of the containers for which compliance is claimed,~~

~~(B) The formula and data used to calculate the percentage of postconsumer material in the container. The following formulas may be used, if mathematically appropriate for the subject containers, or the product manufacturer may supply its own appropriate formula:~~

**The Board will use the formulas below to analyze a manufacturer's claim of compliance. The calculation shall be carried out to two decimal places.**



Manufacturers may use other mathematically appropriate formulas to calculate their degree of compliance. Any manufacturer that uses different formulas should be prepared to explain why their formula is equivalent to the following formulas.

**(a)Postconsumer Material Compliance Option**

For containers for which manufacturer compliance was achieved by the use of postconsumer material in the container(s).

For a single or multiple product or container lines:

$$\text{Percent of Postconsumer Material} = \left( \frac{\text{total weight of postconsumer resin used in all containers}}{(\text{total weight of postconsumer resin used in all containers}) + (\text{total weight of all other resins used in all containers})} \right) \times 100$$

To comply under this option the percent of postconsumer must be equal to or greater than 25.00 .

~~(C) Any other information from the product manufacturer necessary to substantiate the product manufacturer's claim of compliance with this option.~~

**(b) Source Reduction Option**

~~(2) For rigid plastic~~ (1) For containers for which compliance is claimed when the source reduction was accomplished by/through a simple reduction in container weight ~~compliance option is claimed, the product manufacturer must provide, at a minimum, the following information:~~

~~(A) The percentage the container has been source reduced,~~

~~(B) The container weight per unit or use of product of the non-source reduced container and the container weight per unit or use of product for the container for which source reduction is claimed,~~

~~(C) The formula and data used to calculate the percentage that the containers were source reduced. The following formulas may be used, if mathematically appropriate for the subject containers, or the container manufacturer may supply its own appropriate formula:~~

(A) Formula to calculate the percentage of a single product or container packaging line:

$$\begin{array}{l} \text{Percent} \\ \text{Source} = \\ \text{Reduced} \end{array} \left( \frac{(W_n / U_n) - (W_s / U_s)}{(W_n / U_n)} \right) \times 100$$

(B) Formula to calculate the percentage of source reduction for multiple product or container packaging lines:

$$\begin{array}{l} \text{Percent} \\ \text{Source} = \\ \text{Reduced} \end{array} \left( \frac{\sum N_i ((W_{n_i} / U_{n_i}) - (W_{s_i} / U_{s_i}))}{\sum N_i (W_{n_i} / U_{n_i})} \right) \times 100$$

where:

$W_n$  = ~~average weight or volume capacity~~ of the non-source reduced containers

$U_n$  = ~~units or uses of product per~~ number of non-source reduced container

$W_s$  = ~~average weight or volume capacity~~ of the source reduced containers

$U_s$  = ~~units or uses of products per~~ number of source reduced container

$i$  = each container line complying with this source reduction option

$N_i$  = total annual number of containers in container line  $i$  complying with the source reduction option

To comply under this option the ~~P~~ercent ~~S~~ource ~~R~~educed must be equal to or greater than 10.00.

(2) For containers where manufacturer compliance was achieved by either concentrating the product or by a combination of concentrating the product and reducing the weight of the container that holds the product:

(A) Formula to calculate the percentage of a single product or container line:

$$\begin{array}{l} \text{Percent} \\ \text{Source} = \\ \text{Reduced} \end{array} \left( \frac{*(W_n / U_{En}) - (W_s / U_{SE})}{(W_n / U_{En})} \right) \times 100$$

(B) Formula to calculate the percentage of source reduction for multiple product or container lines

$$\frac{\text{Percent Source Reduced}}{\text{Percent Source Reduced}} = \left( \frac{\sum N_i ((W_{n_i} / USE_{n_i}) - (W_{s_i} / USE_{s_i}))}{\sum N_i (W_{n_i} / USE_{n_i})} \right) \times 100$$

where:

W<sub>n</sub> = weight of the non-source reduced containers

USE<sub>n</sub> = units of use of the non-source reduced containers

W<sub>s</sub> = weight of the source reduced containers

USE<sub>s</sub> = number of source reduced containers

i = each container line complying with this source reduction option

N<sub>i</sub> = total annual number of containers in container line i complying with the source reduction option.

To comply under this option the percent source reduction must be equal to or greater than 10.00.

~~(D) Any other information from the product manufacturer necessary to substantiate the product manufacturer's claim of compliance with this option.~~

~~(3) For rigid plastic packaging containers for which the reuse compliance option is claimed, the product manufacturer must provide, at a minimum, the following information:~~

~~(A) A statement of the measurement period that was used to quantify the amount that the identified containers were reused, and a quantitative description of how that measurement period was determined;~~

~~(B) Copies of sales reports or other evidence that show the following:~~

~~1. The total volume or weight of the product sold in the original containers in the established measurement period, and~~

~~2. The total volume or weight of the replacement product sold. Sales reports of the product sold in the original rigid plastic packaging container and sales reports of the replacement product must be identified separately; and~~

~~3. If the replacement product is of a different strength than the original product, the product manufacturer must provide the appropriate conversion factor. The conversion factor shall explain the number of uses per weight unit or volume unit of product for both the original product and for the replacement product.~~

~~(C) The formula and data used to calculate the number of reuses achieved for the containers. The following formulas may be used, if mathematically appropriate for the subject containers, or the product manufacturer may supply its own appropriate formula:~~

**(c) Reuse**

For containers where manufacturer compliance was achieved by reuse of the container(s):

(1) Formula to calculate the number of reuses for a given measurement period for a single product or container line:

$$\begin{array}{l} \text{Average Reuse} \\ \text{Per} \\ \text{Container line} \end{array} = \frac{(\text{number of replacement product packages sold}) \times (n)}{(\text{number of original containers sold})}$$

where:

n = the number of times the replacement product packages will fill the original container to accomplish the same number of units or uses of product held by the original container.

Formula to calculate the average number of reuses for a given measurement period for multiple container lines:

$$\begin{array}{l} \text{Average Reuse} \\ \text{Per} \\ \text{Container} \end{array} = \frac{\sum (R_i)}{\sum (O_i)}$$

where:

i = each container line seeking this compliance option

R<sub>i</sub> = total number of units or uses sold in replacement products packages calculated by multiplying the number of units or uses in each replacement package by the number of replacement packages sold during the measurement period.

$O_i$  = total number of units or uses sold in original containers calculated by multiplying the number of units or uses in each original container by the number of original containers sold during the measurement period.

To comply under this option, the Average Reuse Per Container must be equal to or greater than 5.00.

~~(D) Any other information from the product manufacturer necessary to substantiate the product manufacturer's compliance claim with this option.~~

~~**Note:** This option will demonstrate compliance for the original containers only; the replacement product container must comply under another option.~~

~~(4) For rigid plastic packaging containers for which the refill compliance option is claimed, the product manufacturer must provide, at a minimum the following information:~~

~~(A) A statement of the measurement period that was used to quantify the amount that the identified containers were refilled, and a quantitative description of how that measurement period was determined;~~

~~(B) Copies of sales reports or other evidence which shows the following:~~

~~1. The total number of containers sold during the measurement period.~~

~~2. The total number of original containers used by the product manufacturer during the established measurement period.~~

~~(C) The formula and data used to calculate the number of refills achieved for the containers. The following formulas may be used, if mathematically appropriate for the subject containers, or the product manufacturer may supply its own appropriate formula:~~

#### (d) Refill

For containers where manufacturer compliance was achieved by the manufacturer refilling the container(s):

(1) Formula to calculate the number of refills for a given measurement period for a single product or container:

number of refilled containers sold  
during the measurement period

$$\text{Average Refills Per Container} = \frac{\text{number of ~~new~~ original containers  
sold used by the product  
manufacturer during the  
measurement period}}{\text{number of refilled containers sold  
during the measurement period}}$$

(2) Formula to calculate the number of refills for a given measurement period for multiple product or container lines:

total weight of all refilled containers  
sold during the measurement period

$$\text{Average Refills Per Container} = \frac{\text{total weight of all ~~new~~ original  
containers used sold during the  
measurement period}}{\text{total weight of all refilled containers  
sold during the measurement period}}$$

To comply with this option, the Average Refills Per Container must be equal to or greater than 5 ~~6~~.

~~(F) Any other information from the product manufacturer necessary to substantiate the product manufacturer's compliance claim with this option.~~

### (e) Particular Type or Product Associated Recycling Rate

For containers for which manufacturer compliance was achieved by recycling of the particular type or product associated containers:

(1) Manufacturer must develop their own formulas for calculating compliance for the recycling of particular type or product associated containers. To claim compliance the recycling rate must be equal to or greater than 45.00 percent. Pursuant to section 17944, manufacturers claiming compliance by recycling particular type or product associated containers must receive approval by the Board of their methodology prior to the measurement period for which they seek compliance.

~~(5) For rigid plastic containers for which the particular type or product associated recycling rate compliance option is claimed, the product manufacturer must show the recycling rate for that specific particular type of container sold in California and the number of those containers collected in~~



~~California for recycling. At a minimum, the product manufacturer must do the following:~~

~~(A) Present to the Board in writing for its approval the methodology used to determine the sales and recycling figures. This methodology must explain in detail how the figures were derived or obtained. The Board must approve of the methodology prior to its use to determine a particular type or product associated recycling rate. Beginning for compliance year 1996, for any given calendar year, if a product manufacturer elects to base compliance on this option, the methodology must have been submitted to the Board by July 1 of the previous year. A product manufacturer may use the same methodology that the Board adopts to determine the aggregate recycling rate if the product manufacturer can demonstrate how the method is appropriate and comparable. The Board shall notify the product manufacturer within 60 days of the postmark of the request as to whether the methodology is acceptable. If a methodology is determined to be unacceptable, the Board will provide the rationale for why the methodology is not acceptable and provide suggestions as to how the proposed methodology could be altered to be made acceptable.~~

~~(B) Once a methodology has been approved, that same methodology must be used to determine the figures submitted as part of a compliance claim. If the approved methodology is not used and the manufacturer selects this compliance option, the Board may reject the product manufacturer's compliance claim. The methodology remains valid to determine compliance in future years, unless it is modified by the product manufacturer without the Board's approval. Procedures for obtaining authorization for modifying a methodology are identical to those for establishing the initial methodology as stated in this section. The Board may request original data.~~

~~(C) Product manufacturers that use the particular type recycling rate to comply with this program may designate any person as the entity to design the methodology, perform the study, and submit supporting documentation to the Board on behalf of the product manufacturers who are using the particular type rigid plastic packaging containers.~~

~~(D) Any other information from the product manufacturer necessary to substantiate the product manufacturer's compliance claim with this option.~~

~~(E) To comply under this option, the recycling rate must be equal to or greater than 45 percent.~~

**(f) Floral Industry Reuse Of Containers**

For containers for which manufacturer compliance was achieved by the reuse of containers by the floral industry:

(1) Manufacturer must develop their own formulas for calculating compliance for the reuse of floral industry containers. To claim compliance the containers must be reused no less than twice in a two year period. Pursuant to Section 17945.3, manufacturers claiming compliance by reusing floral containers must receive approval by the Board of their methodology prior to the measurement period for which they seek compliance.

~~(6) Product manufacturers using the floral industry compliance option, as specified in section 17944(a)(5), shall submit to the Board for review and approval a methodology showing how affected containers will meet the two year reuse criteria. For 1997, the product manufacturer shall submit the proposed methodology to the Board on or before July 1, 1997. For subsequent years, the manufacturer shall submit the proposed methodology to the Board on or before July 1 of the calendar year immediately prior to the year the manufacturer intends to use this compliance option.~~

~~The methodology shall include:~~

~~(A) The proposed method used to determine the number of containers sold to the floral industry in California;~~

~~(B) The proposed method used to determine the total number of containers sold in California; and~~

~~(C) The proposed method used to determine the average reuse (in years) of the containers purchased by the floral industry in California. One acceptable method would be a statistically valid survey of the product manufacturer's floral industry customers, to be conducted by an independent contractor. If this method is used, a copy of the proposed survey form must be included in any submittals to the Board.~~

~~(7) Based upon information received related to subdivisions (1) through (6) of this section, the Board may request additional information as it deems necessary.~~

~~(b) Can a product manufacturer switch the option it uses to attain compliance for its rigid plastic packaging containers? A product manufacturer may change the option it~~

~~uses to attain compliance for its rigid plastic packaging containers one time per calendar year or other established measurement period.~~

~~(c) When must I submit supporting documentation to the Board? Following receipt of your compliance certification, the Board may request that you submit documentation to support your compliance claim. You must submit supporting documentation at the Board's request. If the Board wants you to submit supporting documentation, the Board will mail a request and you will have 60 days following the postmarked date to supply the information. Supporting documentation shall be submitted to the Board by certified mail. If the Board does not request supporting documentation, you should not include it with your compliance certification.~~

~~(d) How long must I keep the records required by these regulations? For all compliance standards used by a product manufacturer other than source reduction, all documentation supporting any compliance claim must be available for at least four years following the end of the compliance period. For source reduction compliance claims, the supporting documentation for the baseline year as specified in subdivision (a)(2) of this section must be available to the Board for at least four years after the product is no longer sold in California.~~

#### NOTE

Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Sections 42310, 42320, 42321 and 42325, Public Resources Code.

#### HISTORY

1. New section filed 11-4-94; operative 12-5-94 (Register 94, No. 44).
2. New subsections (a)(6)-(a)(6)(C), renumbering and amendment of former subsection (a)(6) to new subsection (a)(7), and amendment of Note filed 5-30-97; operative 5-30-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
3. Amendment of subsection (d) filed 2-2-2000 as an emergency; operative 2-2-2000 (Register 2000, No. 5). A Certificate of Compliance must be transmitted to OAL by 6-1-2000 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2-2-2000 order transmitted to OAL 6-1-2000 and filed 7-11-2000 (Register 2000, No. 28).

#### **Section 17944.2 17946. How Will Waivers Be Granted? Waivers**

~~(a) The Board shall grant a waiver when the product manufacturer demonstrates that one or more of the following conditions applies: Which rigid plastic packaging containers are eligible for waivers from this program?~~

~~Waivers are allowed under the following conditions:~~

(1) The postconsumer content compliance option is waived for rigid plastic packaging containers if they cannot meet the postconsumer material requirement of Section 17944 of this Article and remain in compliance with applicable state and federal regulations, including those adopted by the United States Food and Drug Administration. Containers waived under this condition must comply under another compliance option.

(2) The postconsumer content compliance option of Section 17944 of this Article is waived for rigid plastic packaging containers if it is technologically infeasible to use 25 percent postconsumer content. Containers waived under this condition must comply under another compliance option.

~~(3) All requirements of Section 17944 of this Article are waived for a product manufacturer if by January 1, 1995, 50 percent, by number, of the product manufacturer's rigid plastic packaging containers sold or offered for sale in California, contain at least 25 percent postconsumer material, and all the manufacturer's containers will be in compliance using any option listed in Section 17944 on or before January 1, 1996.~~

~~(4)~~<sup>(3)</sup> All requirements of Section 17944 of this Article are waived for an introduced product or package, pursuant to Section 17943 <sup>(9)</sup>, for 12 months immediately after the date on which it is first sold or offered for sale in California.

(b) I am a product manufacturer. How do I receive a waiver?

(1) To receive a waiver for your rigid plastic packaging containers pursuant to Section ~~17944.2~~ <sup>17946</sup>(a), you may only petition the Board as part of the compliance verification and auditing process described in Sections ~~17944.2~~ <sup>17946</sup> and 17947 of this Article. You must submit to the Board by certified mail a written request containing the information below, in order for the Board to consider granting a waiver:

the rigid plastic packaging container(s) for which the waiver is being requested, the basis for the waiver, and the name, mailing address, and telephone number of the person to whom the Board shall direct future communications relating to the petition.

Petitions to the Board for a waiver pursuant to Section ~~17944.2~~ <sup>17946</sup>(a)(~~5~~ <sup>3</sup>) above must also include the following:

a signed affidavit stating that the product held by the container was introduced into commerce in California after January 1, 1995, and that the product conforms to the "introduced" definition. The affidavit must include the date on which the product was first sold or offered for sale in California. The product manufacturer must supply documentation to substantiate the date of entry to the California marketplace, such as evidence of a California-based media campaign.

(2) Pursuant to section (a)(3) of this section, ~~t~~The Board will grant a general waiver, in accordance with Public Resources Code Section 42330 (b)(1), for all product manufacturers that use rigid plastic packaging containers if less than 60 percent of California's single family households have access to curbside collection programs which include beverage container recycling, ~~as described in (a)(3) of this section~~. You may not petition the Board for this waiver. The Board will consult the Department of Conservation's, Division of Recycling biannually to obtain the information necessary to determine whether this waiver should go into effect. This information shall be made public at the meetings of the California Integrated Waste Management Board and/or the Local Assistance and Planning Committee meetings held in the months of January and July of each year.

~~(3) Product manufacturers who want a waiver pursuant to Section 17944.2 17946(a)(4) (3) above shall not petition the Board for a waiver. If the Board requests should require certification and documentation from a product manufacturer that wants to be granted this waiver, the product manufacturer may demonstrate at that time that 50 percent, by number, of its rigid plastic packaging containers sold or offered for sale in California contained at least 25 percent postconsumer material during the calendar year 1995, and all of the manufacturer's containers are in compliance using any option listed in Section 17944 of this Article on or before January 1, 1996.~~

(c) How will the Board inform a product manufacturer if its petition for a waiver has been accepted or rejected?

Upon receipt of a product manufacturer's petition for a waiver, the Board will review the petition and will convey its finding to the product manufacturer within 60 days. All Board responses shall be in the form of written correspondence directed to the product manufacturer's designated contact person.

#### NOTE

Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Sections 42310, 42310.1, 42326 and 42330, Public Resources Code.

### HISTORY

1. New section filed 11-4-94; operative 12-5-94 (Register 94, No. 44).
2. Change without regulatory effect repealing subsections (a)(3), (a)(6) and (b)(4) filed 3-24-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).
3. Change without regulatory effect renumbering former subsections (a)(4)-(5) to (a)(3)-(4) after repeal of former subsection (a)(3) in prior action filed 3-28-97; effective 4-23-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).
4. Editorial correction of History 3 (Register 97, No. 17).

### **Section ~~17944.5~~ 17946.5. Exempt Rigid Plastic Packaging Containers.**

(a) Which rigid plastic packaging containers are exempt from the requirements of this Article? Pursuant to Public Resources Code Section 42340, the following containers are exempt from the requirements of this Article:

- (1) Rigid plastic packaging containers produced in or out of the state which are destined for shipment to other destinations outside the state and which remain with the products upon that shipment. “Destined for shipment to other destinations outside the state” means that the sale of the rigid plastic packaging container to the final end user occurs outside California,
- (2) Rigid plastic packaging containers that contain drugs, cosmetics, food, medical devices, medical food, or infant formula as defined in the federal Food, Drug and Cosmetic Act (21 U.S.C. 301 et seq.),
- (3) Rigid plastic packaging containers that contain products regulated by the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.),
- (4) Rigid plastic packaging containers that are manufactured for use in the shipment of hazardous materials and are prohibited from being manufactured with used material by federal packaging material specifications and testing standards set forth in Section 178.509 of Title 49 of the Code of Federal Regulations, or are subject to testing standards set forth in Sections 178.600 to 178.609, inclusive, of Title 49 of the Code of Federal Regulations, or to which recommendations of the United Nations on the transport of dangerous goods are applicable.

(b) I am a product manufacturer. ~~Must I petition the Board to~~ how do I verify to the Board that my rigid plastic packaging containers are exempt from the requirements of this Article?

~~No, you are not required to petition the Board to verify that your rigid plastic packaging containers are exempt.~~ If requested **notified** by the Board to certify compliance pursuant to section ~~17946~~ **17945.2** of this article, you must submit to the Board by certified mail a written response containing the information below:

~~the rigid plastic packaging container(s) for which the exemption is being claimed, the basis for the exemption, and the name, mailing address, and telephone number of the person to whom the Board shall direct future communication relating to the exemption.~~

- 1) description of the rigid plastic packaging container(s) for which the exemption is being claimed;
- 2) basis for the exemption, which shall include specific citation to any applicable federal regulations, any applicable registration numbers, any applicable Material Safety Data Sheets, or other documentation as needed to support the exemption claim; and
- 3) name, mailing address, and telephone number of the person to whom the Board shall direct future communication relating to the exemption.

The documentation must be submitted under penalty of perjury, according to the following format:

**“I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.”**

(Date)

(Signature)

#### NOTE

Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Sections 42310, 42326 and 42340, Public Resources Code.

#### HISTORY

1. New section filed 11-4-94; operative 12-5-94 (Register 94, No. 44).
2. Change without regulatory effect amending subsection (a)(4) filed 3-18-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 12).
3. Change without regulatory effect amending subsection (a)(2) filed 3-24-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).

#### **Section 17947. Auditing**

(a) Will the Board audit my certifications? The Board, or its agent, may audit your certifications. The Board, or its agent, may ask you for supporting documentation as described in Sections 179465.2 and ~~17946.5~~ **17945.3** of this Article.



(b) How will the Board request supporting documentation? To obtain the information, the Board , or its agent, will mail a request to you. The Board , or its agent, will list the information it needs and explain why ~~the Board needs~~ the information is needed. You will have 60 days following the postmarked date on the Board's , or its agent's, request to supply the information.

(c) How will the Board conduct an audit? If the Board decides to conduct an audit of your records to determine compliance with program requirements, the audit will be conducted based on information you provide to the Board. The Board , or its agent, ~~may request~~ will notify you if supplemental information ~~from you~~ is necessary ~~during the course of the audit, if necessary.~~ The Board , or its agent, will mail you the results within 60 days of the date that the Board , or its agent, receives any supplemental information requested.

(d) What if I cannot support my claim of compliance or, if I fail to provide ~~requested~~ the information to the Board , or its agent,? If you cannot support a claim of compliance made during a compliance certification, or if you fail to provide the ~~requested~~ necessary information in accordance with this Article, you may be subject to the ~~finer~~ violations and penalties set forth in Section 17949 of this Article.

#### NOTE

Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Sections 42320 and 42321, Public Resources Code.

#### HISTORY

1. New section filed 11-4-94; operative 12-5-94 (Register 94, No. 44).

### **Section 17948.5. Letters of Non-Objection.**

#### NOTE

Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Sections 42310 and 42323, Public Resources Code.

#### HISTORY

1. New section filed 11-4-94; operative 12-5-94 (Register 94, No. 44).

3. Change without regulatory effect repealing section filed 3-24-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).

### **Section 17948. Proprietary Information.**

(a) How will the Board handle confidentiality of information?

(1) Upon the request of a manufacturer or trade association, the Board shall not disclose information, required by Section 17948 as it read prior to January 1, 1997, related to individual manufacturers, to the extent that it may legally be withheld from disclosure. Information related to individual manufacturers may be withheld from disclosure:

(A) if it is found to contain proprietary information pursuant to Public Resources Code Section 42323;

(B) to the extent provided by Government Code Sections 6254(k) and 6255; and

(C) if it constitutes a trade secret as referenced in Public Resources Code Section 40062, Civil Code Section 3426 et seq., and Government Code Section 6254.7.

(2) If the Board receives a written request from a member of the public that the Board disclose data claimed to be trade secret, confidential or proprietary information, or if the Board, upon its own initiative, seeks to disclose such data, the Board shall inform the provider of the information in writing that disclosure of the data is sought, and that a determination is being made as to whether any or all of the information has been properly identified as trade secret, confidential or proprietary information.

(A) If the Board determines that the information is not trade secret, confidential or proprietary information, the Board shall notify the person who furnished the information by certified mail. The person who furnished the information shall have 30 days after receipt of this notice to provide the Board with a complete justification and statement of the grounds on which the trade secret, confidential or proprietary information claim is being made. The justification and statement shall be submitted to the Board by certified mail. The deadline for filing the justification may be extended by the Board upon a showing of good cause made prior to the deadline specified for its receipt.

1. The justification and statement submitted in support of a claim of trade secret, confidential or proprietary information shall include, but is not limited to, the following:

a. a specific description of the data claimed to be entitled to treatment as trade secret, confidential or proprietary information;

- b. a statement as to whether it is asserted that the data is a trade secret, is confidential or proprietary information, that disclosure of the data would result in harmful effects on the person's competitive position, and if so, the nature and extent of such anticipated harmful effects;
- c. any statutory or regulatory provisions under which the claim of trade secret, confidentiality or proprietary is asserted;
- d. the period of time for which trade secret, confidential or proprietary treatment is requested;
- e. the extent to which the data has been disclosed to others and whether its trade secret, confidential or proprietary status has been maintained or its release restricted;
- f. trade secret, confidentiality or proprietary determinations, if any, made by other public agencies as to all or part of the data and a copy of any such determination, if available.

2. Documentation in support of a claim of trade secret, confidential or proprietary information, as specified in subdivision 1. of this section, may be submitted to the Board prior to the time disclosure is sought.

(B) The Board shall determine whether the information is protected as trade secret, confidential or proprietary information within 15 days after receipt of the justification and statement or, if no justification and statement is filed, within 45 days of the notice required by subdivision (A). The Board shall notify the person who furnished the information and any party who has requested the information pursuant to a public records request of the determination, by certified mail.

(C) If the Board determines that the information is not protected as trade secret, confidential or proprietary information, the notice required by subdivision (B) shall also specify a date, not sooner than 15 days after the date of mailing of the notice, when the information shall be made available to the public.

(3) Except as provided in subdivisions (1) and (2), the Board may release information submitted and designated as trade secret, confidential or proprietary information to the following under the following conditions:

(A) Other governmental agencies, and the Legislature may receive information that has been compiled or aggregated from confidential information, but does not reveal the specific sources of the information, when the information has been requested in connection with a local enforcement agency's or the Board's responsibilities under this division or for use in making reports.

(B) To the state or any state agency in judicial review for enforcement proceedings involving the person furnishing the information.

(4) Should judicial review be sought of a determination issued in accordance with section (2), either the person requesting the data or the person making the claim of trade secret, confidential or proprietary information status in relation to the data, may be made a party to the litigation to justify the determination.

#### **NOTE**

Authority cited: Section 6253, Government Code. Sections 40502 and 42325, Public Resources Code. Reference: Sections 6250 et seq., Government Code. Sections 40062 and 42323, Public Resources Code.

#### **HISTORY**

1. New section filed 11-4-94; operative 12-5-94 (Register 94, No. 44).
2. Change without regulatory effect amending section heading, repealing subsections (a)-(h)(2), relettering subsections, and amending newly designated subsection (a)(1) filed 3-24-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).

### **Section 17949. Violations and Penalties**

(a) What may result if I provide the Board with a false or misleading certification? Pursuant to Public Resources Code 42322, within 30 days of the Board having made a determination that an entity provided the Board with a false or misleading certificate, the Board shall refer that entity to the Attorney General for prosecution for fraud.

(b) What may result if I do not comply with the program requirements? Any violation is a public offense and is punishable by a fine not to exceed \$100,000. In addition, violators may be subject to a civil penalty not to exceed \$50,000 per violation. Total fines and penalties are not to exceed \$100,000 per annum for each violator. Annually, on and after July 1, 1996, the Board shall publish a list of all violators of these requirements and the amount of the fines they were assessed.

(c) What are the penalties for not complying with program requirements?

Penalties for specified violations of program requirements follow.

Violation	Description of Violation	Penalty
(1) CCR Section 17944; PRC Section 42310	Product manufacturer did not comply with container requirements. Penalty determined by degree of noncompliance.	\$5,000—\$50,000 See Subsection (d).
(2) CCR Section <del>17946</del> <u>17945.2</u>	Product manufacturer did not submit certification by due date.	\$1,000—\$50,000 See Subsection (e).
(3) CCR Section <del>17946</del> <u>17945.2</u>	Product manufacturer did not submit complete or accurate certification by due date. Degree of incompleteness or inaccuracies include, but are not limited to, misreporting exemptions; failure to account for all products; failure to account for subsidiaries and divisions; lack of container manufacturer's verification of number of containers sold or weight of containers; inconsistencies in information from product manufacturer and container manufacturer; lack of signatures; mathematical inaccuracies.	\$1,000—\$50,000
(4) CCR Section <del>17946</del> <u>17945.2</u> ; PRC Section 42321	Product manufacturer submitted false or misleading information on certification.	Referral to Attorney General for prosecution for fraud within 30 days of discovery by Board; maximum fine, \$100,000.

(d) For violation (1) how will the ~~degree of noncompliance~~ penalty be determined?

For container violations, the Board allows credit for progress towards meeting one or more of the compliance options. Compliance values are converted to “points” which allows for comparisons of all compliance options, and is based on a weighted average calculation of progress towards compliance. If the calculation results in penalties of less than \$5,000.00, then the minimum penalty of \$5,000 will be imposed.

The below calculation is only for the determination of penalties when a product manufacturer is overall non-compliant with container requirements. This calculation is

not intended for determining product manufacturer overall compliance; the calculations to determine compliance can be found in Section 17945.5.

**(1) Data Used in Calculation**

The following information, on each container line item or container line, as reported in the certification

(A) Individual container gram weight

(B) Number of containers reported

(C) For individual container lines as calculated pursuant to Section 17945.5: percent postconsumer material; source reduction; number of refills; or number reuses

**(2) Determining Total Gram Weight**

Determine the total number of grams for each container line item reported. Start by multiplying the individual container gram weight by the number of those particular containers. As shown in ‘Sample 1’ below, container line 1, the container weighs 55 grams, and there were 5,000,000 of those containers which were sold into California. Multiply 55grams by 5,000,000 to get a ‘total gram weight’ of 275,000,000grams into California for that particular container. Repeat calculation for each container line individually.

**(3) Determining Sum Total Gram Weight**

Add all “total gram weight” values to reach the “sum total gram weight” as demonstrated in column (C) line 11 in Sample 1 below, the ‘sum total gram weight’ is 20,945,642,500 grams.

**(4) Converting Compliance Points**

Next, using percent postconsumer material; percent source reduced; or number of reuses or refills as calculated per 17945.5, convert from percent, or reuse or refill into compliance points for each container line item. In ‘Sample 1’ column (F), line 1 has a ‘Total Percent PCR’ of 9.00%. Using the Rigid Plastic Packaging Container Compliance Point Table, below, note that 9.00% PCR converts to 9.00 compliance points.

**(5) Calculation**

To complete the calculation, using ‘Sample 1’ as an example; please use the following formula:

~~The degree of noncompliance will be determined according to the following point system where the amount of violation will be determined according to the following formula: \$50,000 minus \$1,800 times number of points or [\$50,000 – (\$1,800 x number of points)].~~

$$\left( \frac{\text{total gram weight}}{\text{sum total gram weight}} \right) \times \left( \$50,000 - [(\$2,000) \times (\text{individual container compliance points}^1)] \right)$$

$$\left( \frac{[(55\text{g}) \times (5,000,000 \text{ containers})]}{(20,945,642,500\text{g})} \right) \times \left( \$50,000 - [(\$2,000) \times (9.00 \text{ compliance points})] \right) =$$

$$\left( 0.1312922 \right) \times \left( \$32,000.00 \right) = \$420.14 \text{ total penalty Sample 1, line 1}$$

Use the above methodology to calculate penalty dollars for each container line item.

### **(6) Total Weighted Penalty**

Add each container line's penalty determine the 'Total Weighted Penalty'. In Sample 1, the 'Total Weighted Penalty' is \$23,001.38

### **Sample 1: Penalty Calculation**

	(A) Number of Containers Reported (for each product line)	(B) Total Weight of container (grams per individual container)	(C) Cont. Wt. (B) X # Cont. (A)	Post Consumer Material (PCR) Option		(F) Percent PCR	(G) weighted PENALTY	(H) Formula Used
				(D) Container's PCR weight (grams per individual container)	(E) Cont. Wt. (D) X # Cont. (A)			
1	5,000,000	55.00	275,000,000	4.95	24,750,000	9.00	\$ 420.14	[(C1/(C11)) x (50,000-(2,000 x 9.00))]
2	10,000,000	100.00	1,000,000,000	35.00	350,000,000	35.00	\$ (954.85)	[(C2/(C11)) x (50,000-(2,000 x 35.00))]
3	75,000,000	75.00	5,625,000,000	15.00	1,125,000,000	20.00	\$ 2,685.52	[(C3/(C11)) x (50,000-(2,000 x 20.00))]
4	9,000	100.00	900,000	0.00	0	-	\$ -	-
5	55,000	75.00	4,125,000	0.00	0	-	\$ -	-
6	11,000,000	250.00	2,750,000,000	0.00	0	-	\$ -	-
7	7,000,000	250.00	1,750,000,000	0.00	0	-	\$ -	-
8	9,500	65.00	617,500	0.00	0	-	\$ -	-
9	6,300,000	100.00	630,000,000	0.00	0	-	\$ -	-
10	99,000,000	90.00	8,910,000,000	0.00	0	-	\$ -	-
11	90,009,000	1,160.00	20,945,642,000	54.95	1,499,750,000	21.74	\$ 2,150.81	-



## Sample 1: Penalty Calculation (continued)

	(A) Number of Containers Reported (for each product line)	(B) Total Weight of container (grams per individual container)	(C) Cont. Wt. (B) X # Cont. (A)	Source Reduction (SR) Option		(K) Percent Source Reduction	(L) weighted PENALTY	(M) Formula Used
				(I) Container's NON-Source Reduced Weight (grams per individual container)	(J) Cont. Wt. (B) X # Cont. (C)			
1	5,000,000	55.00	275,000,000	0.00	0	-	\$ -	
2	10,000,000	100.00	1,000,000,000	0.00	0	-	\$ -	
3	75,000,000	75.00	5,625,000,000	0.00	0	-	\$ -	
4	9,000	100.00	900,000	125.00	1,125,000	20.00	\$ (2.15)	[(C4/(C11)) x (50,000-(2,000 x 50.00))]
5	55,000	75.00	4,125,000	83.33	4,583,150	10.00	\$ 9.85	[(C5/(C11)) x (50,000-(2,000 x 25.00))]
6	11,000,000	250.00	2,750,000,000	290.00	3,190,000,000	13.79	\$ (2,487.99)	[(C6/(C11)) x (50,000-(2,000 x 34.48))]
7	7,000,000	250.00	1,750,000,000	255.10	1,785,700,000	2.00	\$ 3,341.98	[(C7/(C11)) x (50,000-(2,000 x 5.00))]
8	9,500	65.00	617,500	0.00	0	-	\$ -	
9	6,300,000	100.00	630,000,000	0.00	0	-	\$ -	
10	99,000,000	90.00	8,910,000,000	0.00	0	-	\$ -	
11	90,009,000	1,160.00	20,945,624,500.00	753.43	4,981,408,150	9.56	\$ 861.69	-

## Sample 1: Penalty Calculation (continued)

	(A) Number of Containers Reported (for each product line)	(B) Total Weight of container (grams per individual container)	(C) Cont. Wt. (B) X # Cont. (A)	Reuse Option (N) Number of Reuses	(O) weighted PENALTY	(P) Formula Used
1	5,000,000	55.00	275,000,000	-	\$ -	-
2	10,000,000	100.00	1,000,000,000	-	\$ -	-
3	75,000,000	75.00	5,625,000,000	-	\$ -	-
4	9,000	100.00	900,000	-	\$ -	-
5	55,000	75.00	4,125,000	-	\$ -	-
6	11,000,000	250.00	2,750,000,000	-	\$ -	-
7	7,000,000	250.00	1,750,000,000	-	\$ -	-
8	9,500	65.00	617,500	5.00	\$ -	[(C8/(C11)) x (50,000-(2,000 x 25.00))]
9	6,300,000	100.00	630,000,000	3.60	\$ 421.09	[(C9/(C11)) x (50,000-(2,000 x 18.00))]
10	99,000,000	90.00	8,910,000,000	0.40	\$ 19,567.79	[(C10/(C11)) x (50,000-(2,000 x 2.00))]
-	-	-	-	-	-	-
11	90,009,000	1,160.00	20,945,642,500	-	\$ 19,988.88	-

**PENALTY = \$ 23,001.38**

◀ = [(G11) + (L11) + (O11)]

**Rigid Plastic Packaging Container Compliance Point System Table**

Points	PC Resin (Percent PCR)	Source Reduction (Percent SR)	Reuse (Times)	Refill (Times)
1	1	0.4	0.2	0.2
2	2	0.8	0.4	0.4
3	3	1.2	0.6	0.6
4	4	1.6	0.8	0.8
5	5	2	1	1
6	6	2.4	1.2	1.2
7	7	2.8	1.4	1.4
8	8	3.2	1.6	1.6
9	9	3.6	1.8	1.8
10	10	4	2	2
11	11	4.4	2.2	2.2
12	12	4.8	2.4	2.4
13	13	5.2	2.6	2.6
14	14	5.6	2.8	2.8
15	15	6	3	3
16	16	6.4	3.2	3.2
17	17	6.8	3.4	3.4
18	18	7.2	3.6	3.6
19	19	7.6	3.8	3.8
20	20	8	4	4
21	21	8.4	4.2	4.2
22	22	8.8	4.4	4.4
23	23	9.2	4.6	4.6
24	24	9.6	4.8	4.8
25	25	10	5	5
26	26	10.4		
27	27	10.8		
28	28	11.2		
29	29	11.6		
30	30	12		
31	31	12.4		

Compliance Table (continued)

<u>Points</u>	<u>PC Resin (Percent PCR)</u>	<u>Source Reduction (Percent SR)</u>	<u>Reuse (Times)</u>	<u>Refill (Times)</u>
32	32	12.8		
33	33	13.2		
34	34	13.6		
35	35	14		
36	36	14.4		
37	37	14.8		
38	38	15.2		
39	39	15.6		
40	40	16		
41	41	16.4		
42	42	16.8		
43	43	17.2		
44	44	17.6		
45	45	18		
46	46	18.4		
47	47	18.8		
48	48	19.2		
49	49	19.6		
50	50	20		

(e) For violation (2), what criteria will be used to determine penalties for certifications submitted late?

Certifications submitted late will be assessed the following penalties:

<b>Days Late</b>	<b>Amount of Penalty</b>
1-30	\$1,000
31-60	\$5,000
More than 60 (Considered nonresponsive)	Up to \$50,000

(f) Are there mitigating factors that the Administrative Law Judge or Board may consider in modifying ~~reducing~~ the penalty amount for any violation?

Yes. ~~The Administrative Law Judge or the Board~~ Other factors may include, ~~consider~~, but is are not limited to ~~considering~~, documented evidence of the following, ~~as provided by the product manufacturer~~:

1. Impact on diversion and sustainable markets.
2. Size of company.
3. ~~Degree of cooperation or noncooperation, including documented efforts to obtain container manufacturer's documentation~~ General willingness and responsiveness to work with the Board to complete the certification and come into current or future compliance.
4. Technological feasibility of compliance, including documented efforts to obtain compliant containers.
5. History of previous compliance with the RPPC law.
6. Economic advantage for using noncompliant containers.

Any such evidence provided by the product manufacturer shall be certified under penalty of perjury.

#### **NOTE**

Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Sections 42310, 42321 and 42322, Public Resources Code.

#### **HISTORY**

1. New section filed 11-4-94; operative 12-5-94 (Register 94, No. 44).
2. Amendment of section heading, repealer of former subsections (c)-(e) and new subsections (c)-(f) filed 6-2-2003 as an emergency; operative 6-2-2003 (Register 2003, No. 23). A Certificate of Compliance must be transmitted to OAL by 9-30-2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 6-2-2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 3).
4. Amendment of section heading, repealer of former subsections (c)-(e) and new subsections (c)-(f) filed 1-12-2004; operative 1-12-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 3).